

## HEIRSHIP AND THE INFORMAL APPLICATION

### Parents, siblings, nieces and nephews

TESTATE OR INTESTATE CASE YOU MUST LABEL THE HEIRS. The application has an allegation that all heirs have survived the decedent by 120 hours. You cannot make that allegation without identifying the heirs on the Interested Party List. Type in next to the name of every heir the word HEIR. MN Statutes §524.3-302 states that the Registrar “shall issue a written statement of informal probate if at least 120 hours have elapsed since the decedent’s death.” The informal statement (testate estate) or the informal order of appointment (intestate) require the Registrar to make a determination of heirs. The heirs need to be identified as of five days after the decedent’s death in order for the Registrar to make the heirship determination. MN Statutes §524.2-104

Listing on an application parents, siblings or nieces and/or nephews as heirs means that the decedent left no surviving spouse, children or grandchildren. NO descendants.

The first level of heirs after a determination that there are no descendants, is the level of decedent’s parents. One tip here is that they must be the biological or adopted parents – no stepparents. Stepparents are not heirs.

Parents who survive share equally the decedent’s estate and in intestacy have an equal priority for appointment as personal representative. Only one parent surviving means the surviving parent takes the whole estate. MN Statutes § 524.2-103 (2) Hennepin Registrars want to know the full name and date of death of the predeceased parent to include in the Order of Informal Appointment of Administrator.

Do **not** list siblings of the decedent on an intestate application if there is a parent surviving. They are not heirs and do not have any interest in the estate. If the parent wishes to nominate a sibling of the decedent to serve as personal representative in their place, the estate **cannot** proceed informally. The priority for appointment statute requires a formal probate proceeding. MN Statutes §524.3-203 (e)

In the event no parents survive, the heirship devolves to siblings and any issue of predeceased siblings by right of representation. MN Statutes §524.2-103 (3) Prepare the interested party list by going back to the parents of the decedent. Ask the question how many children did the parents’ of decedent have? This will include siblings of the whole blood and siblings of the half blood. MN Statutes §524.2-107 “Relatives of the half-blood inherit the same share they would inherit if they were of the whole blood.” Make sure the interested party list includes siblings that have predeceased the decedent as well as those that have survived the decedent. For siblings that predeceased the decedent information will need to be obtained as to whether or not they had any issue that survived the decedent. **There is a right of representation at this level of heirship.** A predeceased sibling who died without issue surviving needs to have the words “no issue” following their name on the interested party list. In the event that a predeceased sibling had issue that survived the decedent, those persons will be heirs of the decedent, and they will take the share of the intestate estate their parent would have taken had their parent survived.

If the closest heirs are at the level of siblings, but there is a predeceased sibling with issue surviving, divide the estate at the level of siblings surviving and those predeceased with issue surviving. Do not include in the calculation any predeceased sibling with NO surviving issue. MN Statutes §524.2-106 (c) (1) (i) and (ii)

**Example** – John dies with 3 surviving siblings and two predeceased siblings. Only one of the predeceased siblings had surviving issue (nieces or nephews of the decedent). The estate is divided into how many shares? **Answer** – 4. The surviving issue of the predeceased sibling will split equally the 1/4<sup>th</sup> share of their deceased parent.

To add another level of complexity there may be a predeceased niece or nephew and their issue (grandniece or grandnephew to the decedent) would take by right of representation their parents' share of the intestate estate. This occurs frequently in cases of an aged decedent who came from a large family.

In the initial interview with the client in this type of a case press the client for all family information. Many seem to believe that if a sibling has died their issue have no interest and if they haven't seen or otherwise had contact with the descendants of a predeceased sibling it is like they don't exist. Not true for probate cases.

This is also something to keep in mind for drafting of Wills and Codicils. If you have a client who has no spouse or children talk to them about their heirs. A paragraph can be added to the Will or Codicil entitled "My Family" where the testator sets out his or her familial relationships. The signing of a Will does not eliminate the need to know who the testator's heirs are when the testator dies. The information can be gathered at the time of drafting or estate monies will be spent to find these heirs when the decedent dies.

The above paragraphs have been a discussion of the division of and identification of heirs when there are siblings of the decedent surviving and maybe issue of a predeceased sibling. Confusion seems to come about when all the siblings are deceased and there are nieces and nephews surviving, ONLY nieces and nephews. **All issue** of any predeceased sibling survive the decedent.

MN Statutes §524.2-106 (c) (1) . . . Each surviving descendant in the same generation is allocated one share, . . .

**Example** – John dies all his siblings have predeceased him. All of his siblings left a total of 10 nieces and nephews of the decedent. **No predeceased nieces or nephews.** How many intestate shares do we have? **Answer** – 10 Do not think about how many siblings John originally had because no one survived at that level. In accordance with the above language from the statute, all the nieces and nephews are in the same generation and they are allocated one share. In this example a one-tenth (1/10<sup>th</sup>) share.

A word about nieces and nephews of predeceased spouses, they are NOT heirs. They may well be devisees but they will **not** be heirs. The spouse's nieces or nephews may be treated under the

Will the same as nieces and nephews of the decedent but it does NOT change their blood. The same is true of brothers and sisters-in-law they will never be heirs, the clue is “in-law” not by blood. Heirs are your blood relatives or those who have been adopted.

The Registrars are particular about the information that is set forth on the Interested Party List. It tells the Court that the applicant and/or attorney understand the intestacy statutes and who has an interest in the estate. Do not put unnecessary persons on the interested party list. You may be asked to amend your interested party list if there are too many errors or if you fail to identify the heirs. It is the responsibility of the applicant and/or their attorney to provide the Court with the information that is required by statute for the Registrar to make the necessary findings in the orders pertaining to the case. MN Statutes §524.3-301(1) (ii)